

DAVID Y. IGE
Governor
SHAN S. TSUTSUI
Lt. Governor



Item G
JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
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January 31, 2018

Subject: Request to authorize the Kekaha Agriculture Association to pursue a declaratory order to designate a portion of Agribusiness Development Corporation's Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes, and to certify ADC's authorization as landowner

Authority: Section 163D – 4 (a) (18), Hawaii Revised Statutes

Location: Kekaha, Island of Kauai, Hawaii

Land Area: Portions of the Mana plain lands, acreage to be determined in the Land Use Commission process

Tax Map Key: (4)1-2-02-01 (por) under ADC control

Land Status: Encumbered by Governor's Executive Order Nos. 4007 to the Agribusiness Development Corporation ("ADC") for agricultural purposes.

Trust Land Status: DHHL 30% entitlement lands pursuant to the Hawaii State Constitution.

BACKGROUND: In 2005, the Hawaii State Legislature enacted Part III of the Land Use Commission act, entitled, "Important Agricultural Lands" for the stated purposes of conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands. There are essentially 2 state routes to achieving important agricultural land ("IAL") status – via identification of public lands by the State and via declaration by the Land Use Commission ("LUC"). Because the ADC lands are, by definition, excepted from the inventory of State public lands, a petition for declaratory order is the only state route available to achieve IAL status for the ADC lands. Once designated as IAL, landowners can develop farm dwellings and employee housing on up to 5% or 50 acres of agricultural

housing, whichever is less, and farmers or owners of IAL lands can qualify for income tax credits for agricultural expenditures on infrastructure-type expenses such as roads or utilities, processing facilities, irrigation facilities as well as the farm dwellings. In fact, the tax credit appears to be broad enough to include expenditures that confer a majority of benefit upon IALs, even if incurred by farmers or agricultural businesses that are not direct owners, lessees or licensees of the IALs. We don't know, however, whether this interpretation has been challenged. There are several other incentives as well. Although the current tax incentives expired on December 31, 2107, there is currently an effort before the legislature to revive and extend those tax credits for another ten years.

The ADC manages approximately 5,000 acres of land on the Mana plain pursuant to Executive order 4007. The Kekaha Agriculture Association ("KAA") currently holds a 20-year license for most of the infrastructure improvements available for the use and benefit of all ADC Kekaha land tenants. Included in the KAA-licensed infrastructure are the Kekaha Ditch and the intakes, screens, tunnels, siphons, culverts, overpasses, flumes, recorders, control gates, ladders, gratings, access roadways, measuring weirs, motors, and controls, attached reservoirs, settling basins, wells, shafts, motors, and pumps, drainage canals and ravines, roads, bridges, culverts, railway tracks, security gates, the Waimea and Waiawa hydroelectric power plants, transmission and distribution components, transformers, switches, meters, etc. The KAA has historically expended millions of dollars for infrastructure operational, maintenance and repair costs, subsidized by third-party vendor income from the Kekaha agricultural operations, capital improvement project funds from the ADC, and KAA membership fees. These are precisely the types of activities and expenditures that the IAL tax credits are intended to incentivize.

The KAA has proposed to voluntarily petition the LUC for a declaratory order designating portions of the ADC Mana plain lands as IAL. If successful, and assuming the tax credits are extended, such designation could result in tremendous benefits to the KAA, and to qualified agricultural costs incurred by individual tenants. The petition will only seek IAL designation; there will be no request to reclassify any ADC lands. Attached is a brief description of the benefits to be derived by the KAA.

Although the ADC manages these lands, the fee simple interest in and to the lands remain with the State of Hawaii, through its Board of Land and Natural Resources. Therefore, simultaneous with this request, the ADC has requested that the Land Board also approve the KAA's proposed action.

CONCLUSION: The ADC is tasked with assisting, promoting and developing agriculture within the State. Ownership of these lands by the ADC ensures the use of these lands in agriculture, in perpetuity. However, the ADC can do more to help agriculture, starting with taking advantage of tax incentive programs such as the IAL designation incentives. ADC is also fortunate to have the KAA willing to voluntarily seek IAL designation on its own.

RECOMMENDATION: Accordingly, it is recommended that this Board:

- 1) Authorize the Kekaha Agriculture Association to pursue a declaratory order to designate a portion of Agribusiness Development Corporation's Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes,
- 2) If appropriate, certify or otherwise consent, as the landowner or land manager, to KAA's forthcoming petition as the landowner, and
- 3) Authorize the ADC staff to assist and cooperate with the KAA as necessary to secure the designation of the Mana plain lands as important agricultural lands.

Respectfully submitted,



James J. Nakatani
Executive Director

Designation of the ADC lands in Kekaha as Important Agricultural Lands, and extension of the IAL refundable tax credit, may offer several benefits to ADC and the Kekaha Agriculture Association. Pursuant to Executive Orders, ADC controls certain lands in Kekaha, Kauai that ADC has licensed to the KAA and KAA members.

It may be possible for ADC and/or KAA to secure designation of the ADC lands by the Land Use Commission as Important Agricultural Lands pursuant to Part III of Chapter 205, "Important Agricultural Lands." Under this statute, IAL include lands that are capable of producing "sustained high agricultural yields" and that "[c]ontribute to the State's economic base[.]" IAL also produce agricultural commodities for "export or local consumption" and promote "expansion of agricultural activities and income for the future[.]" In addition, IAL designation is intended to promote the maintenance of "essential agricultural infrastructure systems, including irrigation systems" such as the Kekaha ditch irrigation system. Current farming of the ADC lands appears to be aligned with these basic objectives and suggests IAL designation may be possible.

Upon designation as IAL, ADC and KAA may be eligible for the IAL refundable tax credit, under section 235-110.93, Hawaii Revised Statutes, "Important agricultural land qualified agricultural cost tax credit," if the credit is extended by the Legislature during the 2018 legislative session (the credit has expired). Under the incentives section of the IAL statute, State tax policies shall promote the "economic sustainability" of agriculture and, accordingly, IAL shall be eligible for incentives. Thus, through designation of the ADC lands as IAL, and extension of the refundable tax credit, ADC and KAA may realize certain direct and indirect benefits, including but not limited to the following.

First, the refundable tax credit may reduce the overall cost of farming on the ADC lands. Upon designation of the ADC lands as IAL, under the IAL tax credit statute "each taxpayer" (i.e., presumably KAA and/or KAA members, depending on petitioner for IAL designation) may be eligible to receive a refundable income tax credit amounting to fifty percent of "qualified agricultural costs" up to a total of \$1 million. The Department of Agriculture is charged with verifying and certifying that costs claimed under the credit are "qualified agricultural costs" within the meaning of the statute.

Second, a wide range of agricultural expenditures costs can qualify for the IAL tax credit, thereby aiding and benefiting ADC and KAA. Importantly, the IAL statute authorizes tax credits to "offset operational costs" of farming. The IAL tax credit statute broadly defines "qualified agricultural costs" to include expenditures for a wide range of agriculture-related costs, including planning, construction, repair and maintenance of roads and utilities; agricultural processing facilities; water wells, dams, reservoirs, pipelines, ditches and irrigation systems; agricultural housing; farming equipment; and consulting services.

Third, IAL designation of the ADC lands and extension of the IAL tax credit may aid and support ADC and KAA with regard to irrigation infrastructure, including efforts to upgrade the Kekaha ditch system with pressurized pipelines. The IAL statute authorizes tax incentives to support "agricultural irrigation systems," and under the IAL tax credit statute, "qualified agricultural costs" include water pipelines, ditches and irrigation systems.

Fourth, IAL designation of the ADC lands and extension of the IAL tax credit may aid and support ADC and KAA with regard to electric power needs, including efforts to replace the Waiawa hydropower facility. Utilities for agricultural purposes are among the qualified costs under the IAL tax credit statute.

Fifth, IAL designation and the tax credit may aid ADC and KAA in ongoing efforts to implement the mediated resolution of the recent Water Commission proceeding involving the irrigation system serving the ADC lands, as reflected in the Waimea Watershed Agreement. Under the IAL tax statute, qualifying costs include expenditures for “regulatory processing, studies, and legal and other consulting services related to obtaining or retaining sufficient water for agricultural activities[.]”

Finally, agricultural housing may be similarly advanced insofar as the IAL statute authorizes the construction of farm dwellings and employee housing on IAL, and agricultural housing is specifically identified as a qualifying cost under the tax credit statute.

The foregoing suggests support for IAL designation of the ADC lands, and extension of the IAL tax credit, may result in several potential benefits to ADC, KAA and/or KAA members. Such important benefits appear to be entirely consistent with broader State goals concerning the continued growth, protection and development of agriculture in Hawaii.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Director meeting for January 31, 2018
Department of Agriculture Plant Quarantine Conference Room
1849 Auiki Street, Honolulu, Hawaii 96819

Members:

Letitia Uyehara	Yukio Kitagawa
Lloyd Haraguchi	Douglas Schenk
Leilyn Koev	Denise Albano
Sandra Klutke	Margarita Hopkins
Jeffrey Pearson, DLNR	

Absent:

Scott Enright, DOA	Robbie Melton, DBEDT
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Guests:

Cindy Matsuki, HTDC	Joshua Uyehara, KAA
Tina Deitschman, Senator Dela Cruz's office	
Teresa Dawson, Environment Hawaii	

Staff:

James Nakatani
Myra Kaichi
Lynn Owan
Ken Nakamoto
Todd Low
Cindy Doi

Counsel:

Andrew Goff

A. Call to order.

Chairperson Uyehara called the meeting to order at 9:05 am.

B. Approval of Minutes from the December 20, 2017.

Mr. Schenk moved to approve the minutes; Ms. Hopkins seconded the motion; motion carried unanimously.

C. Request to Re-Issue a Revocable Permit to Andros Engineering Corporation for a Covered Parking Area in Whitmore, Oahu, Tax Map Key (1) 7-1-02-04 (por).

Mr. Nakamoto made the presentation to re-issue a RP to Andros Engineering Corporation for a covered parking which is in the 257 parcel and in the master plan area in Whitmore.

Andros has been renting a parking shed since 2016. Permittee is a world supplier of specialized agricultural equipment based in California and has been operating in Hawaii since 2014. Permittee has been a good tenant and rent payment has been made in a timely manner. ADC plans to redevelop the area which may include the removal of the parking shed. ADC proposes to allow the Permittee to continue using the land for its operation on a month-to-month basis until such redevelopment ensures. The recommendation is to approve the reissuance of a RP to Andros Engineering Corporation for the parking area in Whitmore subject to the following terms and conditions: term of this RP shall be on a month-to-month basis; base rent shall be \$880 per month; shall pay its share of utilities; may apply for rent credit; and no subletting to be permitted without ADC's prior approval in writing.

Ms. Hopkins moved to approve the recommendation; Mr. Pearson seconded the motion. Motion carried unanimously.

D. Request to Re-Issue a Revocable Permit to Davey Tree Expert Company for Parking Area in Whitmore, Oahu, Tax Map Key (1) 7-1-02-04 (por) and (1) 7-1-02-09 (por).

Mr. Nakamoto made the presentation to re-issue a RP to Davey Tree for parking area in Whitmore. Permittee has been renting office space, a covered parking shed, and 10,000 square feet parking area since 2016. Permittee is a tree trimming and landscaping company based in Ohio. The company is currently using the space in Whitmore to store equipment and vehicles. ADC plans to redevelop the area, which include the use of the 10,000 square feet parking area and removal of the office space and parking shed. ADC proposes to allow the Permittee to continue using of land for its operation on a month-to-month basis until such redevelopment ensures. The recommendation is to approve the reissuance of a revocable permit to Davey Tree Expert Company for parking area in Whitmore subject to the following terms and conditions: term of this RP shall be on a month-to-month basis; base rent shall be \$1,634.40 per month; shall pay its share of utilities; and no subletting to be permitted without ADC's prior approval in writing.

Mr. Haraguchi moved to approve the recommendations; Mr. Schenk seconded the motion.

Mr. Kitagawa asked about the office area. Mr. Nakamoto replied WCBDO is leasing on a month to month basis.

Ms. Hopkins asked when storing the equipment do they have restrictions. Mr. Nakamoto replied yes, but no heavy equipments.

Motion carried unanimously.

E. Request to Re-Issue a Revocable Permit to Royal Palm Group/Construction and Landscaping, Inc. for Nursery Purposes, Whitmore, Oahu, Tax Map Key (1) 7-1-*02-09 (por).

Mr. Nakamoto made the presentation to re-issue a RP to Royal Palm Group/Construction and Landscaping for nursery purposes in Whitmore. Royal Palm has been renting four acres since 2010 and was a carry over tenant when ADC acquired the 24 acre parcel. Currently the land is used as a plant nursery and store heavy equipment. ADC plans to redevelop the area and proposes to allow the Permittee to continue to use the land for nursery purposes on a month to month basis until the redevelopment ensures. The recommendation is to approve the reissuance of a RP to the Royal Palm Group for 4 acres in Whitmore, subject to the following terms and conditions: term shall be on a month-to-month basis; base rent shall be \$1,600 per year; and no subletting to be permitted without ADC's prior approval in writing.

Ms. Hopkins moved to approve the recommendations; Mr. Kitagawa seconded the motion.

Ms. Klutke asked on the rent, how long has this been in existence? Mr. Nakamoto replied it is the same terms and conditions as what Dole charged. It is flat and would like to take it back if needed once the plan is completed.

Motion carried unanimously.

F. Request for approval to issue a Land License to Tiansheng Lin dba Lin's Farm for 2 acres of Land in Kalepa, Kauai, identified as, Tax Map Key (4) 3-9-002:020, Unit HSPA #2, for Diversified Agriculture.

Mr. Nakamoto made the presentation to issue a land license to Tiansheng Lin dba Lin's Farm for 2 acres of land in Kalepa, Unit HSPA #2, for diversified agriculture. The Licensee request for farm land in Kalepa to cultivate fruit trees and vegetables. They operate a farm and currently cultivates a variety of fruits and vegetables. They market at the weekly farmers' market held on Kauai and is seeking more land to expand their business to enter larger markets. The irrigated lands which includes Units A,B,C, and HSPA #1-3 has been designated for diversified agricultural use by the ADC Board in 2014. HSPA#2 is approximately 2 acres and is entirely useable. The parcel abuts HSPA #1, Maalo Road, and an earthen irrigation ditch which can provide ample irrigation water to the land for diversified agriculture. The Licensee's plans include clearing the overgrown vegetation and planting fruit trees and vegetables throughout the 2 acres. The Licensee is required to develop a conservation plan in cooperation with the Kauai Soil and Water Conservation District and submit for acceptance to the ADC. Licensee must agree to practicing good agricultural practices both in the fields and in the packing area, and best management practices on the land. Licensee is responsible for learning and implementing Good Agricultural Practices (GAP) and develop a Food Safety Plan to meet expectations for the Food Safety Modernization Act (FSMA) rules and audit requirements. Licensee shall receive GAP certification within 12 months from issuance of License. Regular inspections will be conducted to ensure this rule is enforced. Licensee has agreed to work with ADC staff to ensure they comply with Food Safety laws and regulations. The additional 2 acres will allow the Licensee to demonstrate his

operation can meet basic regulatory compliance which is a prerequisite for expanding his operation to larger markets. The recommendation is to issue a land license to Tiansheng Lin dba Lin's Farm for 2 acres in Kalepa for diversified agriculture with the following conditions: License fee of \$100 per acre per year or \$200 per year for 2 acres; Licensee would be required to join the Kalepa Koalition (KK) or to pay a monthly maintenance fee to the KK that would support efforts in maintaining the infrastructure; shall not sublicense the whole or any portion of their premises without the prior written approval of the ADC Board; Licensee shall receive GAP certification within 12 months from issuance of License.

Mr. Haraguchi moved to approve the recommendation; Ms. Klutke seconded the motion.

Ms. Albano asked on GAP, will it be for all ADC's licenses? Mr. Nakamoto replied yes, we will be amending our terms and conditions for all licenses to include GAP because right now there is nothing in our license that they need to be GAP certified.

Mr. Kitagawa asked if they have another farming area. Mr. Nakamoto replied yes in the Kealia area on the Kapaa side which is not ADC's. Mr. Kitagawa asked if he only wants to plant 2 acres. Mr. Nakamoto replied they would like more acres but when looking at his current area, it was decided that they were not ready for more acres at this time. Ms. Klutke said she and Mr. Nakamoto visited his farm and he is very ambitious but he needs to follow food safety rules. She thinks he will be moving from the Kealia area and will be leasing land from Grove Farms to grow his vegetables. So probably sticking to his plan of only growing fruit trees in Kalepa.

Ms. Hopkins asked how does the farmer get certified under GAP? Mr. Nakamoto replied currently the DOA and we are working on that internally/administrative on how to get basic guidelines. DOA has a checklist and do a pre audit GAP list that we are currently looking at. There are a lot of information at DOA and UH.

Chair commented that with FSMA all states need to make a determination who would carry out the program at the state level because the enforcement will not be done by the federal. In Hawaii the role would normally have gone to the Department of Health but they have no interest in doing it therefore the program will be taken over by DOA and are currently creating a component that will help the education process and help the farmers get GAP certified.

Motion carried unanimously.

Item H was moved ahead of Item G

H. Update by the Hawaii Technology Development Corporation Agricultural Hackathon (Agathon).

Ms. Matsuki made an update of the Hackathon that occurred a few weeks ago. The event was held for two weekends with 83 attendees. There was a work project and challenges

of the agricultural industries were presented to the participants. The following Saturday they had an ag tech panel and work day. Sunday was a demo day where they had 10 teams pitch their solutions. The judges choose Harvest Vision as first place which was an AI solution for coffee harvesting. They will follow up with the teams to see if anyone are interested in the development of solutions or help with a proposal to complete their solutions. If anyone is interested in looking at the results you can check Agathon.devpost.com which has all the team submissions. They will be sending out surveys to get feedbacks.

Short recess was called at 9:45.

Item I was moved ahead of Item G

I. Presentation by Todd Low on the Spread Techno Farm: An Example of In Door Agriculture.

Mr. Low made a power point presentation on the Spread Techno Farm which he, Mr. Nakatani and Mr. Fred Lau visited recently in Japan that represents a new prospective on agriculture innovation. The sustainability philosophy is: soil, economic, environmental, business and technology. He also provided a short video on the spread lettuce farm located in Kyoto, Japan which is a completely closed hydroponics system.

G. Request to authorize the Kekaha Agriculture Association to pursue a declaratory order to designate a portion of Agribusiness Development Corporation's Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes, and to certify ADC's authorization as landowner.

Mr. Joshua Uyehara was present to request permission for the Kekaha Ag Association to petition the land commission to designate some of the ADC's lands on the Mana plains as important ag lands. Ms. Kaichi made the presentation to request to authorize the KAA to pursue a declaratory order to designate a portion of ADC's Kekaha lands as Important Agricultural Lands (IAL) in accordance with Chapter 205, HRS, and to certify ADC's authorization as landowner. The KAA has proposed to voluntarily petition the LUC for a declaratory order designating portions of the ADC Mana Plains lands as IAL. If successful, and assuming the tax credits are extended, such designation could result in tremendous benefits to the KAA, and to qualified agricultural costs incurred by individual tenants. The petition will only seek IAL designation; there will be no request to reclassify any ADC lands. Although the ADC manages these lands, the fee simple interest in and to the lands remain with the State of Hawaii, through its Board of Land and Natural Resources. Therefore simultaneous with this request, the ADC has requested that the Land Board also approve the KAA's proposed action. The ADC is tasked with assisting, promoting and developing agriculture within the State. Ownership of these lands by the ADC ensures the use of these lands in agriculture, in perpetuity. However, the ADC can do more to help agriculture, starting with taking advantage of tax incentive programs such as the IAL designation incentive. ADC is also fortunate to have the KAA willing to voluntarily see IAL designation on its own. The recommendation: that the

Board authorize the KAA to pursue a declaratory order to designate a portion of ADC's Kekaha lands as IAL in accordance with Chapter 205, HRS; if appropriate, certify or otherwise consent, as the landowner or land manager, to KAA's forthcoming petition as the landowner; and authorize the ADC staff to assist and cooperate with the KAA as necessary to secure the designation of the Mana plain lands as important agricultural lands.

Mr. Schenk moved to approve the recommendations; Mr. Haraguchi seconded the motion.

Mr. Kitagawa asked if the County agreed to participate on County designation. Mr. Uyehara replied that the County said that because there is enough private lands that were set aside they were not looking at any kind of mandatory designation. KAA will fund the petition. The background: Hartung owns about 150 acres on Oahu and have looked at the process for IAL designation and is having a meeting with Office of Planning this afternoon because they are moving forward for their own petition and in learning about the process and the process involved it became feasible and beneficial that KAA do the same. It seems that it would be very cost effective and the refundable tax credit that is renewed this year which has broad base support from the legislature so that credit is up to a million dollars per legal entity which qualifying agricultural cost so that would not only include KAA but all individual members of the KAA and also non-member tenants on the ag lands. When you look at the overall economic benefit of the potential IAL designation, it outweighs the cost of petition. The cost will be in the range of \$100,000 which the breakdown is for \$40,000-\$60,000 for legal fees to assemble the petition and present it before the LUC and \$40--\$60,000 in fees to surveying and describing the lands. They are trying to designate as much as they can reasonable to justify to the LUC.

Ms. Klutke stated that the KAA agreement is to accept IAL. Would it be everyone in KAA including the small farmers who are on a RP. Mr. Uyehara replied because the designation pertains to lands itself, it doesn't matter who requests the petition at the end, all of the farmers who are farming IAL on ADC lands can request the tax credit. The tenants who reside on DLNR or DOA property would not benefit unless a portion of their operations are on ADC lands. Ms. Kaichi mentioned that DOA was asked if they would like to participate at this time but DOA said that this was not a good time for them.

Mr. Haraguchi asked if they foresee any public objections. Mr. Uyehara replied that he cannot foresee any but he does not know. A typical push back for IAL is are you strategically trying to set aside land for development by doing this.

Ms. Klutke asked how long will this process take. Mr. Uyehara replied for example Hartung started in December and the month of May will be on LUC's agenda. But they still need to wait for DLNR's approval. Also need to verify that the tax credit is renewed this session which they would know in a couple of months and once they know that they will move forward.

Motion carried unanimously.

J. Findings of the investigative committee

This item deferred until the next meeting.

K. Executive Director's Reports and Updates.

1. Legislature
2. Galbraith

Mr. Nakatani reported on the ADC legislative bills and CIP requests for 2018.

He reported on the Galbraith lands for small farmers and also a list of the farmers with their acres and their status of where they were as far as all their pending items needed before acquiring their parcels.

On the agenda for the next meeting will be more discussion on issues regarding the legislature.

Mr. Haraguchi asked if there was anything that the Board can help ADC's staff with legislative matters or Galbraith land issues. He felt that if working with these small farmers to comply is not working then we should move to get the farms which are probably the big farms onto the parcels. Mr. Schenk felt that ADC's mission is to get the small farmers on the land and in compliant and to build this industry again.

Mr. Kitagawa suggested that we spend some time at the next meeting discussing issues pertaining to the small farmers. Mr. Nakatani stated that one of issues whereby the farmers are not able to get on the lands is getting a conservation plan. The conservation program is not adopted to the movement of agriculture. We are trying to build a system that addresses good agricultural practices, food safety which we did not anticipate being so difficult. The conservation program needs to be looked at because the planner is the one who will work on their plan. This could be a discussion the board can have.

L. Adjourn

Ms. Albano moved to adjourn; Ms. Klutke seconded the motion; motion carried unanimously.

Meeting adjourned at 11:05 am.

Respectfully submitted,

Cindy Doi
secretary